IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11-9-2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S.MANIKUMAR

H.C.P.Nos.536 & 537 of 2006

Nanda @ Nanda Kumar … Petitioner in HCP.536/06

Doss @ Haridoss .. Petitioner in HCP.537/06

Vs.

1.The Commissioner of Police,
Greater Chennai,Chennai 600 008.

2.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai 600 009. .. Respondents in both HCPs.

Petitions filed under Article 226 of the Constitution of India for the issue of writs of Habeas Corpus, calling for the records of the 1st Respondent in Memo Nos.100 and 99/BDFGISV/2006, dated 5.4.2006 setting aside the order of detention passed therein and direct the respondents to produce the petitioner before this Hon'ble Court namely 1. Nanda alias Nandakumar, Son of Thiruveni; 2. Doss alias Haridoss, Son of Arumugam confined in Central Prison, Chennai before this Hon'ble Court and set the petitioners at liberty as stated therein.

For petitioners : Mr.R.Ravichandran

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

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COMMON ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The respective petitioners by name Nanda @ Nandakumar and Doss @ Haridoss, who were detained as "Goondas" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

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Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention orders both dated 05.04.2006, challenge the same in these Petitions.

2. Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioners submitted that the detaining authority relied on the statements of witnesses alleged to have been made before the sponsoring authority, but copies of the same were not furnished to the detenus and hence, the detention orders get vitiated. He further contended that in spite of the request made, copies of those statements were furnished only on 15.8.2006, whereas the detention order was passed on 5.4.2006. While elaborating the above contention, the learned counsel for the petitioners has brought to our notice the ground No.3 in the grounds of detention wherein the detaining authority has stated,

> "The Inspector of Police examined the witnesses and recorded their statements. During the course of investigation Tr.Doss @ Haridoss surrendered before the 6th Metropolitan Magistrate, Egmore, Chennai on 27.02.2006 in S.7 Madipakkam Police Station Crime No.420/2006 and remanded to judicial custody till 13.03.2006 and lodged at Central Prison, Chennai as remand prisoner. Tr. Nanda @ Nandhakumar surrendered before the Judicial Magistrate, Tiruvallur on 27.2.2006 in S.7 Madipakkam Police Station Crime No.420/2006 and remanded to judicial custody till 13.03.2006 and lodged at Central Prison Chennai as remand prisoner. On receipt of the above information the Inspector of Police filed an affidavit before the Judicial Magistrate Alandur requesting to grant police custody and the learned Judicial Magistrate, Alandur granted police custody. The Inspector of Police examined Tvl. Doss @ Haridoss and Nandha @ Nandhakumar and recorded their voluntary confessional statement. .... "

and submitted that inasmuch as the statements said to have been made by the witnesses were relied on by the detaining authority while arriving at subjective satisfaction, copies of those statements should have been supplied to the detenus along with the grounds of detention and furnishing copies only on 15.8.2006, after a period of four months from the date of detention orders will not cure the defect.

4. Learned Additional Public Prosecutor submitted that when the relevant documents were supplied to the detenus by the sponsoring authority, some of the statements were left out while

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stitching the same, but copies of the same were furnished subsequently. According to him, no prejudice was caused to the detenus and admittedly, the statement of Khaja, complainant and affected person and all other relevant documents were furnished to the detenus within the prescribed time. He also brought to our notice that the detaining authority very much relied on the statement of Khaja who was wrongfully restrained by the detenus and another accused and threatened with knife by uttering filthy words. The learned Additional Public Prosecutor took us through the First Information Report in that case in entirety which contains all the details including the behaviour and the acts committed by the detenus and the other accused.

5. We verified the contents of the First Information Report, and we find that the learned Additional Public Prosecutor is right in contending that it refers all the details. It is also brought to our notice that the remand report which is available at page No.132 of the Paper Book supplied to the detenus also refers all the details including the statements of khaja and others. We also verified the confession statements of the detenus as well as the co-accused. All the above materials were considered by the detaining authority and after satisfying himself and in order to maintain public peace and public order, he clamped the detention order.

6. Learned counsel for the petitioners heavily relied on the decision of the Supreme Court reported in STATE OF U.P. v. KAMAL KISHORE (1988 CRI.L.J.405:AIR 1988 SC 208). In that case, the Supreme Court dismissed the appeal filed by the State affirming the view taken by the Allahabad High Court that the detenus were supplied only with copy of F.I.R. and also the extract of charge sheet, but not the statements recorded under section 161 Cr.P.C., and hence, the detention order passed under the National Security Act was liable to be quashed. We verified the factual details of the case before the Supreme Court. Paragraph-7 of the judgment of the Apex Court makes it clear that the names of the detenus were not mentioned in the F.I.R. in respect of the incident in ground No.1. In such circumstances, it was held that the non-supply of vital documents would undoubtedly prevent the detenu from making an effective representation. In the present case, we have already verified that the details were found in the F.I.R., in the statement of complainant Khaja, in the remand report, and also in the confession statements of the detenus and co-accused. In view of the same and of the fact that the detaining authority considered all those materials and after satisfying himself he passed the orders of detention, we are of the view that the decision of the Supreme Court in Kamal Kishore case (1988 CRI.L.J.405) is not applicable to the case on hand.

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7. The other decision relied on by the learned counsel for the petitioners is the judgment of this Court reported in BEPARI SALEEM v. THE STATE OF TAMIL NADU (2005(2) CTC 469). In that case, the Division Bench in which one of us (P.SATHASIVAM,J.) was a party, after finding that copy of the remand extension order which was relied on by the detaining authority while passing the detention order, must have been supplied to the detenu along with grounds not later than 5 days and in exceptional circumstances not later than 15 days and the failure to supply the same would affect the detention order, set aside the same. However, for the same reasons which we recorded in the earlier paragraph of this order, we are of the view that the said decision is also not applicable to the instant case.

8. In UNION OF INDIA v. CHAYA GHOSHAL [(2006) 1 SCC (Cri) 257], the Supreme Court, while considering the purpose and intend of preventive detention, concluded thus,

> " The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The action of the executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meanings, provide the justification for the laws of preventive detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This

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> jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law", said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs." This, no doubt, is the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other".

The above mandate of the Supreme Court makes it clear that the satisfaction of the detaining authority is considered to be primary importance with great latitude in the exercise of its discretion. It is also clear that the detaining authority can act on any material and on any information presented before it.

9. In H.C.P.No.189 of 2006 (Ramesh vs. State of Tamil Nadu and another), this Court by order dated 19.6.2006 has concluded that even in the absence of remand extension order, if there is any other material to show that the detenu was in remand in Central Prison on the date of passing the detention order, the detaining authority is free to pass an order depending upon other materials. In our case, we have already concluded that the detention order was passed on the basis of relevant materials, copies of which were furnished to the detenus within the prescribed time. Even the left out statements of some of witnesses were also furnished to the detenus on the basis of representation. Accordingly, we reject the first contention.

10. Learned counsel appearing for the petitioners next contended that though in the grounds of detention, particularly in para-4, the detaining authority has relied on Crime Nos.420/2006 and 421/2006 on the file of S7, Madipakkam Police Station, yet the remand order in Crime No.420/2006 was not furnished to the detenus along with the grounds of detention, however, the English version of the same was furnished on 1.6.2006 and its Tamil version was furnished on 6.6.2006. On the other hand, the learned Additional Public Prosecutor took us through the details mentioned in the Special Report which refers both the crime numbers, viz., 420/2006 and 421/2006. Further, it is not in dispute that the remand order in Cr.No.420/2006 was furnished to the detenus. Though it is stated that the detenus were prejudiced due to the non-supply of remand

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order in Cr.No.420/2006 within the prescribed time, no prejudice is shown before us. In this regard, it is useful to refer the unreported decision of this Court rendered in H.C.P.No.834 of 2002 dated 12.9.2002 (Mrs.Jaya vs. The Secretary to Govt. of Tamil Nadu, Prohibition and Excise Department, Fort St.George, Chennai 600 009 and another) wherein after referring the decision of Supreme Court in Pownammal v. State of Tamil Nadu (1999 SCC (Crl.) 231), the Bench of this Court concluded that the prejudice should be shown by the detenu on account of non-supply of documents. In the present case, as observed earlier, no prejudice is shown by the detenus. Accordingly, the second contention of the learned counsel for the petitioners fails.

11. In addition to the above points, learned counsel for the petitioners submitted that inasmuch as there is no signature of the detaining authority found in the detention orders served to the detenus, the said order cannot be sustained. We verified the original order, which is available in the records produced by the learned Additional Public Prosecutor and also the communication sent to the detenus. The original orders contain signature of the detaining authority, but only in the copies sent to the detenus the person authorised has signed, and we are satisfied that there is no error or infirmity as claimed; accordingly,we reject the said contention.

12. The learned counsel for the petitioners also contended that though the detaining authority has referred several details in para 3, all those materials were not furnished. Here again, we are unable to accept the said contention. We have already dealt with the point in the earlier part of our order and we are satisfied that copies of all the required and relied upon documents were furnished to the detenus along with the grounds of detention and even the left out documents, viz., statements of some of the witnesses were also furnished to the detenus subsequently, and hence, there is no substance in the said contention.

13. The learned counsel for the petitioners further submitted that inasmuch as the detaining authority has not verified the Crime number of the ground case, whether it is 420/2006 or 421/2006, the detention orders are liable to be quashed on the ground of non-application of mind. We have discussed the said aspect while considering the second contention of the learned counsel for the petitioners. In addition to the same, we verified the relevant grounds, particularly, ground No.3, wherein in one place it is mentioned as Crime No.420/2006 instead of 421/2006, and in all other places, the crime numbers have been correctly mentioned, that the second adverse case relates to Crime No.420 of 2006 S.7 Madipakkam Police Station and the ground case relates to Crime No.421/2006 S.7 Madipakkam Police Station. Merely because at one

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place the detaining authority has wrongly mentioned the crime number,it cannot be claimed that he has not applied his mind while passing the orders of detention; accordingly, we reject the said contention.

14. Finally, the learned counsel for the petitioners relying on the decision of the Supreme Court in Appeal (Crl.) No.1176 of 2005 dated 16.02.2006 (T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi) and the Division Bench decision of this Court in Krishnaswamy Govindan vs. The Secretary, Government of Tamil Nadu, Chennai and others reported in 2004 M.L.J. (Crl.) 560 contended that in view of the fact that the detenus have not filed any bail application and no such application is pending on the date of passing of the detention orders, the conclusion arrived at by the authority is nothing but ipse dixit, and hence the orders of detention get vitiated. In the light of the said contention, we verified the factual position in the case before the Supreme Court as well as the Division Bench of this Court and also the case on hand. It is true that both the detenus have not filed bail applications seeking bail on the date of passing of the detention orders. However, it cannot be ruled out that if the detenus make applications for bail, it cannot be claimed that the same will not be considered at any point of time. In the case before the Supreme court, viz., Chaturvedi's case, it is seen that the bail applications moved by the appellant Chaturvedi had been rejected by the Courts and there was nothing to apprehend that he was likely to move bail application or there was imminent possibility of bail being granted. As discussed earlier, the entire materials available in the grounds of detention show even though the detenus have not moved bail applications, in the absence of bar for moving bail applications either immediately or after some time, it cannot be said that the bail would not be granted and in that event if they come out on bail, it will endanger the public peace and public order and these aspects have been carefully considered by the detaining authority. As observed by the Supreme Court in the case reported in 2006 (1) SCC (Cri.) 257 (cited supra), it is the subjective satisfaction of the detaining authority and whether the materials placed are sufficient or not is left to the satisfaction of the detaining authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner and the satisfaction of the detaining authority, therefore is considered to be of primary importance with great latitude in the exercise of its discretion. In such circumstances, as observed by the Hon'ble Supreme Court in the above referred to decisions, we are satisfied that the last two decision relied on by the learned counsel for the petitioners are not helpful to the case on hand.

15. No other grounds have been raised before us by the learned counsel appearing for the petitioners.

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In the result, both the habeas corpus petitions fail and the same are dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Commissioner of Police,
Greater Chennai,Chennai 600 008.

2.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai 600 009.

3.The Superintendent,
Central Prison, Chennai.

4.The Joint Secretary to Government,
Public (L & O),
Chennai-9.

2 ccs to Mr.R.Ravichandran, Advocate, SR.41995, 41994

AKM (CO)

dv/15.9.06

Order in
HCP.Nos.536 & 537/06

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